Before the
FEDERAL COMMUNICATIONS Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Implementation of the Local Competition Provisions in the Telecommunications Act of 1996	)	CC Docket No. 96-98
	)	
Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers	)	CC Docket No. 95 -185

RHYTHMS AND COVAD RESPONSE TO OPPOSITIONS TO PETITION FOR RECONSIDERATION

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Rhythms NetConnections Inc. ("Rhythms") and Covad Communications Company ("Covad") (together "Respondents"), by their attorneys, herein file their response to the oppositions to the petitions for reconsideration and clarification in the above-captioned proceeding.[1]

INTRODUCTION

As the record reflects, the Commission should grant Respondents' Joint Petition for Reconsideration and reverse its decision authorizing incumbent local exchange carriers ("ILECs") to impose conditioning charges. In addition, Respondents urge the Commission to reject the attempt of certain ILECs to limit the scope of the *UNE Remand Order* by clarifying that the fiber feeder portion of a loop is an integral part of the loop and is not a component of packet switching. Finally, the Commission should clarify that ILECs must provide specific information on remote terminals.

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[1] *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, Third Report and Order and Fourth Further Notice of Proposed Rulemaking, Commission 99-238 (rel. Nov. 5, 1999) ("*UNE Remand Order*").

DISCUSSION

I. The Commission Should Reconsider Its Decision to Permit Incumbents to Impose Conditioning Charges on Competitive Carriers

A. Conditioning Charges are Inconsistent with TELRIC

Several of the parties, including Rhythms and Covad, have petitioned the Commission to reconsider its decision authorizing ILECs to impose conditioning charges on CLECs.[2] As these parties have demonstrated, the Commission's well-established TELRIC pricing methodology relies on the most efficient, least cost forward-looking network configuration. While the Commission requires that conditioning charges be based on TELRIC, these charges would not exist in a forward-looking network configuration and thus are antithetical to TELRIC. As the Commission recognizes, conditioning involves the removal of embedded devices, including load coils, excessive bridged taps, repeaters and other equipment that interferes with the provision of forward-looking advanced services.[3] A forward-looking network is engineered to support data services, obviating the need for line conditioning.[4] Thus, to the extent that conditioning is necessary, the TELRIC recurring monthly loop rate, by definition, compensates the ILEC fully for such conditioning.

In opposing these petitions, the ILECs hide behind the embedded costing argument that they should be able to impose conditioning charges simply because "it costs to condition loops . . . the ILECs must be given the opportunity to recover such costs."[5] In other words, according to the ILECs, if they "are to be required to perform work on behalf of requesting carriers, as the Commission's rules provide in the case of loop conditioning, the ILECs must be reimbursed for

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[2] Rhythms and Covad Joint Petition ("Joint Petition") at 4-6; @Link Networks, DSL.net and MGC Communications Petition at 4-6; MCI WorldCom Petition at 15-17; McLeod Communications Petition at 6; *See also* AT&T Opposition at 16; Sprint Opposition at 7; ALTS Opposition at 5 (supporting reconsideration on this issue).

[3] *UNE Remand Order* at ¶ 172.

the associated costs."[6] This argument is centered on an embedded costing approach, which the Commission expressly rejected four years ago in favor of forward-looking costing principles.[7] The Commission's decision to permit ILECs to recover these embedded costs thus directly contradicts the Commission's existing pricing rules.[8]

Rather than admit their attempt to recover embedded costs, the ILECs' redefine TELRIC to include cost recovery for today's embedded network.[9] SBC asserts that "conditioning costs are not embedded, historical costs," but in the very next sentence argues that "the costs to modify the incumbent network is an actual, forward-looking cost that is incurred to change the incumbent's network, *as it exists today*, for the CLEC's benefit."[10] Whether the ILECs will incur a cost is not the proper question in a forward-looking pricing analysis. As Sprint explained, "the very purpose of TELRIC pricing is defeated if ILECs can charge extra for cost functions simply because those cost functions exist in the embedded network."[11] Therefore, the proper question is what is the cost to condition loops in a forward-looking network.

What the ILECs fail to recognize, is that in a forward-looking environment, the UNE loop rate fully compensates the ILEC for all costs related to that loop. Indeed, such a network must support both voice and data services, which, contrary to Bell Atlantic's assertion, includes advanced services, such as DSL.[12] As the Commission acknowledges, a loop can only be data ready if it is unencumbered by intervening devices such as load coils, excessive bridged taps, and

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[4] Sprint Opposition at 4; ALTS Opposition at 5; @Link Network, DSL.net and MGC Communications Petition at 4.

[5] BellSouth Opposition at 8; *see also*, US West Opposition at 15; SBC Opposition at 28.

[6] US West Opposition at 15.

[7] *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket 96-98, First Report and Order, 11 Commission Rcd 15499 (1996) ("*Local Competition Order*") ¶ 673.

[8] 47 C.F.R. 51.507(e).

[9] Bell Atlantic Opposition at 12-13; BellSouth Opposition at 8; GTE Opposition at 8-9; SBC Opposition at 28; US West Opposition at 15-17.

[10] SBC Opposition at 28 (*emphasis supplied*). *See also*, US West Opposition at 16 ("The economic cost *today* of conditioning a loop *today* is simply the actual expense incurred in conditioning that loop.")

[11] Sprint Opposition at 4; *see also* 47 C.F.R. 51.505.

repeaters.[13] While GTE argues that "recovery of line conditioning costs is consistent with TELRIC as long as forward-looking pricing principles are used in determining those costs,"[14] the fact is that under forward-looking principles that cost would be $0.00, because "[f]orward looking networks are free of devices that require line conditioning."[15] As several parties explained, in a "forward-looking environment, the ILEC loops would already be conditioned for the provision of advanced services."[16] This is why ILECs never charge their own retail DSL customers for loop conditioning. Likewise, ILECs should not be permitted to "double recover" any conditioning costs by charging their wholesale customers for conditioning.[17] Therefore, pursuant to its prior TELRIC holdings, the Commission should reconsider its decision authorizing ILECs to impose conditioning charges.

B. Even if the Commission Affirms its Authorization of Conditioning Charges, the Commission Should Prohibit ILECs from Imposing Conditioning Charges for Loops Less Than Eighteen Thousand Feet and Ensure that any Conditioning Charges are Properly Based on TELRIC

Even if the Commission continues to allow ILECs to charge for the removal of embedded devices, it should reverse its decision to allow ILECs to impose conditioning charges for loops below 18,000 feet.[18] Contrary to the ILECs' argument,[19] Respondents' petition is not merely a reiteration of arguments raised in the 1996 *Local Competition Order*. Rather, the petitions on this issue demonstrate that the *UNE Remand Order* is internally inconsistent. Specifically, as discussed in the *Joint Petition*,[20] the Commission concluded that loops under 18,000 feet,

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[12] *See* Bell Atlantic Opposition at 12-13.

[13] *UNE Remand Order* at ¶ 172.

[14] GTE Opposition at 8-9.

[15] Sprint Petition at 4.

[16] @Link Networks, DSL.net and MGC Communications Petition at 4.

[17] 47 C.F.R. 51.507(e).

[18] Joint Petition at 6-7; @Link Networks, DSL.net and MGC Communications Petition at 5; AT&T Opposition 16l; Sprint Opposition 6.

[19] BellSouth Opposition at 7; GTE Opposition at 8.

[20] Joint Petition at 4-7.

pursuant to existing network design parameters, should not contain loading coils or excess bridged taps. Thus, under no circumstance could such devices be construed as forward-looking. Nonetheless, the Commission concluded that ILECs can charge for the removal of such devices–forcing CLECs to pay thousands of dollars for removal of devices that should not even exist on the loop. To the extent that ILECs have placed interfering devices on loops less than 18,000 feet, they have violated long-accepted engineering rules and the ILECs, not the CLECs, should pay to remove this equipment. In other words, as Sprint explained, ILECs "should not be rewarded for their failure to maintain their networks at minimum engineering levels."[21]

Finally, if any conditioning charges are deemed appropriate in a forward-looking network construct, they must be fully consistent with a TELRIC-based methodology, and therefore must reflect efficient approaches to loop conditioning. As Respondents explained in their Joint Petition, when an ILEC technician removes load coils from that ILEC's loop plant, the technician removes all of the load coils in an existing binder group of loops rather than conditioning the loop one line at a time.[22] The ILEC should use the same "efficient removal of conditioning equipment and not (for example) on the removal of a load coil one loop at a time."[23]

II. The Commission Should Clarify Its Definition of Packet Switching and Loops

Several carriers request that the Commission clarify or reconsider its definition of packet switching and the extent to which ILECs must make packet switching available on an unbundled basis.[24] Bell Atlantic argues against any reconsideration of this issue, but in the next breath asserts that the Commission should not include DSLAMs in the loop definition.[25] While opposing an expansion of the loop definition by the Commission, Bell Atlantic fails to

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[21] Sprint Opposition 6.
[22] Joint Petition at 5 n.11.
[23] Sprint Opposition 7.
[24] AT&T Petition 10; MCI Petition at 6-12; Sprint Petition at 10-13.

acknowledge its current application of an impermissibly restrictive definition of the local loop in an ongoing New York costing proceeding.[26] Thus, Bell Atlantic's position conflicts with the Commission's definition of "loop," while urging an expanded definition of packet switching.[27]

According to Bell Atlantic, when a competitor seeks to provide DSL services over a loop that is served by fiber fed digital loop carrier ("DLC"), the fiber feeder and associated DLC electronics used to transmit the data from the remote terminal ("RT") to the central office is no longer part of the loop. Rather, Bell Atlantic asserts that this element *becomes* packet switching that is not subject to a general unbundling obligation. To reach this conclusion, Bell Atlantic has improperly limited the definition of the "loop" and broadened the definition of "packet switching" in disregard of Commission rulings. The Commission should use the occasion of this reconsideration proceeding to proactively clarify that such anticompetitive ILEC action is an unlawful construction of unbundling obligations.

A. The Commission Should Clarify that Fiber Fed DLC is Part of the Loop, Which is Subject to the Commission's Unbundling Requirements

Bell Atlantic's attempt to limit competitive DSL providers' unbundled access to the fiber feeder portion of the loop is directly at odds with the Commission's consistently broad definition of the local loop. Under 47 CFR § 51.319(a)(1), the local loop element is a "transmission facility between a distribution frame (or its equivalent) in an incumbent LEC central office and the loop demarcation point at an end-user customer premise." Moreover, the loop comprises "all features, functions and capabilities of such transmission facility, [including] dark fiber, attached electronics (except those electronics used for the provision of advanced services, such as Digital

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[25] Bell Atlantic Opposition 4, n.4.

[26] Case 98-C-1357, *Proceeding On the Motion of the Commission to Examine New York Telephone Company's Rates for Unbundled Network Elements*, Module 3, Bell Atlantic Opposition to Discovery Request RLI-BA-109.

[27] *Id.*

Subscriber Line Access Multiplexers), and line conditioning." Under this definition, the loop includes any "transmission facility"—an inclusive, technologically-neutral term. The definition's narrow exclusion of DSLAMs and similar advanced services electronics by itself demonstrates that fiber feeder and DLC equipment are loop facilities that must be unbundled.

Moreover, the Commission's decisions, from the *First Report and Order* to the *UNE Remand Order*, clearly provide that CLECs are entitled to *all* loops, regardless of the technology the ILEC uses to provision the loop.[28] There is no question that loops using IDLC or similar remote concentration devices must be unbundled.[29] The *UNE Remand Order* makes clear that a loop includes ***all electronics*** applied to the loop, with the sole and limited exception of the DSLAM. Thus, contrary to Bell Atlantic's current position, the loop comprises *both* the distribution portion *and* the feeder portion, as well as DLC electronics used on the loop.

Without such a requirement, the Commission found, "end users served by such technologies would not have the same choice of competing providers as end users served by other loop types. Further, such an exception would encourage incumbent LECs to 'hide' loops from competitors through the use of IDLC technology."[30] Bell Atlantic's attempt to "hide" the fiber portion of the loop is precisely what the Commission sought to avoid.

Furthermore, Bell Atlantic's interpretation unreasonably discriminates against DSL providers. Bell Atlantic does not preclude carriers from obtaining the entire loop to provide voice services even if the loop includes fiber feeder and DLC electronics. But Bell Atlantic somehow claims a right to preclude carriers wishing to obtain *the exact same unbundled loop* to provide DSL service. There is no rational basis for such results and the Commission should expressly reject any such misrepresentation and manipulation of the *UNE Remand Order*.

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[28] *Local Competition Order* at ¶ 377-80; *UNE Remand Order* at ¶ 181.
[29] *First Report and Order* ¶ 383; *UNE Remand Order* ¶ 175.

B. The Commission Should Clarify that the Definition of Packet Switching Does Not Include The Transmission Facility Between the Remote Terminal and the Central Office

Bell Atlantic's reliance on the Commission's treatment of packet switching to justify its position is equally unavailing and warrants Commission clarification. The Commission's definition of packet switching clearly excludes the fiber transmission path between an RT and the central office. Packet switching is defined as "the basic packet switching function of routing or forwarding packets, frames, cells, or other data units based on address or other routing information contained in the packets, frames, cells or other data units and the functions that are performed by the Digital Subscriber Line Access Multiplexers." In essence, packet switching provides a routing function, not the line concentration function of DLC systems. The definition thus fully comports with the Commission's determination that the local loop UNE includes DLC facilities.

Moreover, the four conditions necessary before an ILEC must unbundle packet switching leave no doubt that the Commission did not deem DLC systems to be "packet switching." Under Rule 319(c)(3)(B), an ILEC must unbundle packet switching capability when: (i) the ILEC has deployed DLC systems or any other similar system in which fiber optic facilities replace copper facilities in the distribution section; (ii) there are no suitable copper loops available; (iii) the ILEC has not permitted the requesting carrier to deploy its own DSLAM or obtain virtual collocation arrangements; and (iv) the ILEC has deployed packet switching capability for its own use.

Condition (i) requires that the ILEC have deployed DLC systems over fiber. If, as Bell Atlantic contends, the Commission regarded DLC over fiber as packet switching, condition (iv)—requiring that the ILEC have deployed packet switching—would be redundant. The

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[30] *Id.*

Commission's conditions, therefore, indicate that DLC—"the electronics at the remote terminal and the fiber transport systems connecting such"—is ***not*** part of "packet switching."

Bell Atlantic's position fails at the policy level as well. The Commission declined to impose a general unbundling requirement for packet switching based in part on its finding that competitive carriers were actively deploying packet switching technology, so that lack of access to packet switching as a UNE did not impair them in their ability to compete in all market segments.[31] The loop facilities that Bell Atlantic wishes to categorize as packet switching, by contrast, include fiber feeder that, like other local loop plant, CLECs could not duplicate without inordinate cost and delay. Bell Atlantic's effort to hide DLC systems from the unbundling obligation by characterizing them as packet switches thus fails to meet the most basic policy requirement of the Commission's analysis.

Moreover, adopting Bell Atlantic's definition of packet switching leads to the anomalous result of denying CLECs, who collocate their DSLAMs at the RT, the ability to provide service, since they would have no way of bringing their traffic back to the central office. Clearly, the Commission did not intend this result. Therefore, the Commission should clarify that fiber feeder DLC is a component of the local loop and subject to the unbundling obligations, regardless of the type of service deployed by competitors over those loops.

III. The Commission Should Clarify Its Decision to Facilitate CLEC Access to Remote Terminal Information

The Commission should also adopt MCI WorldCom's petition to "provide CLECs all relevant data on remote terminating points . . . needed to make subloop unbundling operational."[32] As MCI WorldCom correctly notes that "[w]ithout such information, there is a great risk that CLECs will try to market services that cannot in fact be supported by the ILEC

[31] *UNE Remand Order* ¶ 306.

facilities."[33] Bell Atlantic's assurances that access to this information can be secured through negotiations is insufficient.[34] Therefore, as AT&T explains, the Commission should clarify its rules to ensure that "CLECs can obtain timely access to information regarding remote termination points, so that subloop unbundling can be made operational."[35]

CONCLUSION

For the reasons stated herein, the Commission should reconsider its decision authorizing ILECs to impose conditioning charges; clarify that fiber fed DLC is not a component of packet switching, but rather a portion of the unbundled local loop; and clarify that CLECs are entitled to access information on the ILECs' RTs.

Respectfully submitted,

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[32] MCI Petition at 23.
[33] MCI Petition at 24.
[34] Bell Atlantic Petition at 17.
[35] AT&T Opposition at 16.

I, Stanley M. Bryant, do hereby certify that on this 3rd day of April, 2000, that I have served a copy of the foregoing document via * messenger and U.S. Mail, postage pre-paid, to the following:

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